DIRECT INVESTIGATION REPORT

ON

THE ADMINISTRATION OF THE MID-LEVELS ADMINISTRATIVE MORATORIUM

September 2006

Office of The Ombudsman

Hong Kong

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EXECUTIVE SUMMARY

Direct Investigation on Administration of the Mid-Levels Moratorium

Background

1. Traffic congestion has been a long-standing problem in Mid-Levels. In 1972, Government introduced an administrative moratorium ("the Moratorium") to restrict building development in Mid-Levels to ease traffic congestion. It has remained in force ever since. Our investigation into a complaint raised questions as to how the Moratorium has been administered.

2. Against this background, The Ombudsman initiated a direct investigation in August 2004 to examine:

- (a) the rationale for the Moratorium;
- (b) the roles and responsibilities of the relevant bureaux and departments in administering and monitoring its application; and
- (c) the mechanism, if any, for reviewing the measure.

3. Owing to the technical nature of the matter, the many changes in Government structure in the intervening years and the inherent complexity and complications, we have had taken an unusually long time to research into the background of the subject matter. In this connection, we had some difficulties tracing developments over the decades since the 1970s.

The Moratorium

4. Traffic congestion was serious between Pok Fu Lam and the North-west of Hong Kong Island, with Caine Road and Bonham Road being the main thoroughfare. In June 1972, the then Governor-in-Council approved an administrative Moratorium to restrict building development in Mid-Levels, pending improvement to the road network. The Moratorium comprised the following measures:

(a) public land – sale to be deferred;

(b) sites under restricted leases – to defer all further lease modification which would give rise to a greater intensity of development;

(c) sites under unrestricted leases – to use the powers under the Buildings Ordinance and Regulations to prevent more intensive redevelopment.

Roles and Responsibilities of Bureaux and Departments

5. The following bureaux and departments (and their predecessors since 1972) are involved in the administration of the Moratorium:

(a) Lands Department ("Lands D") – sale of Government land and lease modification;

(b) Buildings Department ("BD") – enforcement of the Buildings Ordinance and Regulations;

(c) Planning Department ("Plan D") – processing planning applications under Outline Zoning Plans ("OZPs") for the Mid-Levels area;

(d) Transport Department ("TD") – conducting or commissioning studies to assess the traffic situation;

(e) Environment, Transport and Works Bureau ("ETWB") – overall coordination (including monitoring, assessing and reviewing the need for the Moratorium); and

(f) Housing, Planning and Lands Bureau ("HPLB") – policy bureau for (a), (b) and (c).

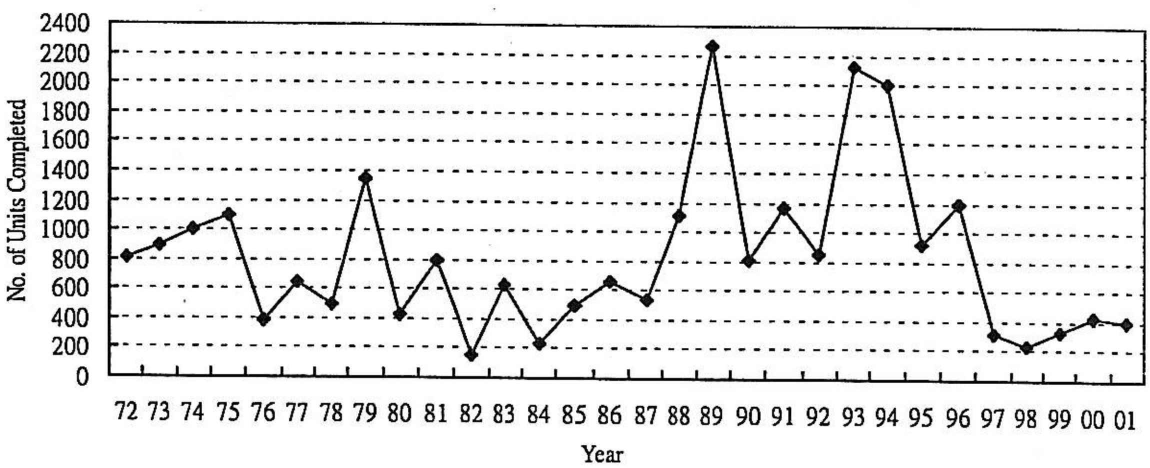
Effectiveness of the Moratorium

Number of Residential Units

6. In traffic engineering terms, the volume of traffic generated by residential developments is essentially related to the number of residential units.

7. **Table I** below shows the number of residential units completed on sites under restricted or unrestricted leases in Mid-Levels between 1972 and 2001.

Table I : Number of Residential Units Completed 1972 - 2001



8. Despite the Moratorium, the number of residential units has continued to grow, particularly during the period from 1985 to 1996. In terms of its stated objective, the Moratorium has clearly failed: the continued building developments and redevelopments have resulted in a rise in the number of residents and traffic volume in Mid-Levels.

Traffic Situation

9. Eight traffic studies on Mid-Levels were undertaken in 1973, 1983, 1986, 1989, 1993, 1996 (twice) and 2005.

10. These studies show that even with the Moratorium in place, the traffic condition in Mid-Levels has never been satisfactory. The eighth traffic study completed in 2005 confirmed the futility of the Moratorium:

(a) all major junctions had accumulated traffic trails;

(b) travel speeds on almost all road sections were lower than the average on Hong Kong Island; and

(c) the practical maximum capacity of the road network had been reached.

Evaluation

11. Such limited effectiveness, or failure, is attributable to the following factors.

Inherent Limitations

12. Only four Government sites were available in Mid-Levels so the deferment of

public land sale could have little impact (cf. para. 4(a)).

13. Most private sites in Mid-Levels are under unrestricted lease (147 unrestricted vs 28 restricted as at 2005) and hence lease modification is not necessary for redevelopment (cf. para. 4(b)).

14. As regards sites under unrestricted leases, an Appeal Tribunal determination in late 1972 showed that the Buildings Ordinance could not be used to refuse building development on the ground of intensity (cf. para. 4(c)).

15. In view of the ineffectiveness of the *administrative* Moratorium, a temporary statutory restriction on building development was urgently passed by the Legislative Council in August 1973, requiring the Building Authority to refuse all building plans submitted for the first time. This stop-gap measure was eventually lifted in 1978. Second statutory restriction on building development, imposed on geotechnical considerations, lasted from 1979 to 1982. Thereafter, building development in Mid-Levels has boomed, only curbed to some extent by the imposition in 1990 of a plot ratio of 5 in "Residential Group (B)[1]" zone in the Mid-Levels West OZP.

Poor Planning

16. It would appear that the initiator(s) of the Moratorium was (were) not fully aware of (or did not properly focus on) the inherent limitations as discussed above, and in particular paragraph 14.

[1] This zone is intended primarily for medium-density residential development.

17. **BD** (and its predecessors) could not apply the Buildings Ordinance and Regulations to refuse building development on grounds of intensity, but had enforced the temporary statutory restrictions which had helped control building developments; **Plan D,** in processing planning applications in Mid-Levels, has consulted the relevant bureaux and departments and taken account of the Moratorium among other factors as land use compatibility, traffic, environmental and visual impacts; while **TD** has conducted studies to monitor the traffic situation. These were all efforts in support of the Moratorium.

18. As regards **Lands D,** from a complaint case (para. 1), we have found that the Department's somewhat "liberal" or "loose" approach to lease modification had the net effect of facilitating rather than restricting building development, thus generating more traffic, against the intent of the Moratorium.

Complaint Case on Lease Modification

The case concerned a site comprising two lots under a common lease with an imposed height limit of 35 feet on any building on the site. In addition, the maximum permitted height for any building under the Outline Zoning Plan was ten storeys above carports or the height of the existing buildings, whichever was the greater.

On application from the developer, the Lands Department allowed lease modification to remove the 35-feet height restriction, subject to the maximum gross floor area permitted under the lease. This enabled the site, meant originally for one "house", to be developed

into a condominium with two towers, each ten storeys high above three levels of carports and other facilities.

Weak Coordination

19. ETWB has recently acknowledged its role as the lead bureau in coordinating and overseeing the implementation of the Moratorium. However, neither the Bureau nor its predecessors have demonstrated the necessary leadership or initiative by calling for regular assessment or comprehensive review or directing the departments concerned to implement the Moratorium more stringently and effectively.

20. Poor coordination has resulted in the following:

(a) If a proper review had been conducted in the early 1980s, the Administration would have noted that sites under unrestricted leases could be restrained only by statutory measures.

(b) The use of plot ratio restriction as planning control mechanism was belatedly introduced in 1990, eight years after the lifting of the second statutory restriction.

(c) More effective restriction on development intensity could have been achieved through more stringent planning control, but somehow was not considered.

(d) The "liberal" or "loose" approach adopted by Lands D to lease modification does not seem to have been monitored by the coordinating branch/bureau (now ETWB) or its own policy branch/bureau (now HPLB).

(e) Bureaux and departments have been left to define its own role and develop its own strategy. In reality, all have minded their own business （各自爲政）.

(f) The number of residential units completed has increased, despite the Moratorium and the plot ratio restriction.

Repercussions of Government Restructuring

21. The need for continuity of responsibility and coordination in implementation can be said to have been compounded, or overlooked, by the multiple restructuring exercises of Government over the years. In the 1970s, one policy branch (Buildings and Lands Branch followed by Environment Branch) had policy responsibility over lands, planning, traffic and transport matters with a single operational department, i.e. the Public Works Department ("PWD") overseeing lands, traffic engineering, town planning and buildings matters. PWD was the *de facto* overall coordinator for the introduction and implementation of the Moratorium. However, major Government restructuring in 1982 split the land and traffic/transport policies between different branches and defederalised PWD. In effect, this demolished central coordination without an effective replacement mechanism. There was not even an inter-bureau or inter-departmental working group for monitoring the implementation of the Moratorium.

Conclusions

22. This investigation examines the effectiveness of the implementation of the Moratorium. Our focus is on public administration aspects, namely, its enforcement and effectiveness in meeting the stated objective. It remains a policy decision for

Government whether or not to continue with the Moratorium.

23. The Moratorium was well-intentioned, to ease traffic congestion pending improvement to the road network. However, it was ill-conceived and poorly planned, with considerable inherent limitations. The need for effective coordination was apparently overlooked in Government's multiple restructuring and insufficient efforts were put in by the branch/bureau supposed to coordinate (now ETWB); the branches/bureaux and departments concerned have each been attending essentially to its own turf and the Moratorium poorly coordinated and inefficiently monitored. Consequently, its effect has not been adequately assessed or properly reviewed.

24. Against such background and on Government's stated objective of restricting development in Mid-Levels, the Moratorium was practically doomed to fail from the outset.

Recommendations

25. In this light, The Ombudsman makes the following recommendations.

Effectiveness

(a) The bureaux and departments concerned should consider what measures are necessary to supplement, strengthen or replace the Moratorium.

Coordination and Delineation of Responsibilities

(b) The coordinating body (currently ETWB) should:

   (i) review the need, or otherwise, for the continuation of the Moratorium; and

   (ii) if such need is established, give clear guidelines to the bureaux and departments concerned for proper implementation and close cooperation in coordination.

Transparency

(c) On completion of the review, Government should make a clear statement on the way forward.

(d) Thereafter, the bureaux and departments concerned should keep the public posted on developments or changes from time to time.

Impact of Reorganisation

26. As the Moratorium was introduced over 30 years ago, some of the comments made in this report are directed at former branches/bureaux and departments, not the current incumbents. However, this case and its development over the decades offer invaluable experience for future reference with the reorganization of the Government structure and good lessons on the need for continuity of responsibility and coordination in implementation of major policies.

-- END --

Office of The Ombudsman
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1

INTRODUCTION

BACKGROUND

1.1 Traffic congestion has been a long-standing problem in Mid-Levels. The road network in the area is characterised by narrow, steep and winding single two-lane carriageways with little space for traffic diversion in case of emergency. Government has been concerned over the problem since the late 1960s. In 1972, Government introduced an administrative moratorium to restrict building development in Mid-Levels ("the Mid-Levels Moratorium") to ease traffic congestion. Our investigation into a complaint found that a surprisingly liberal approach had been adopted by the Lands Department ("Lands D") in defining the "intensity of development" in that area. This raised questions as to how the Mid-Levels Moratorium has been administered by the departments concerned over the decades.

1.2 Against this background, The Ombudsman initiated a direct investigation on this under section 7(1)(a)(ii) of The Ombudsman Ordinance, Cap 397. The Director of Lands, the Director of Buildings, the Director of Planning and the Commissioner for Transport were notified of her decision in August 2004.

AMBIT

1.3 This direct investigation aims to examine:

(a) the rationale for the Mid-Levels Moratorium;

(b) the roles and responsibilities of the departments concerned in administering and monitoring its application; and

(c) the mechanism, if any, for reviewing the measure.

1.4 In the course of this investigation, we have found that Government had, at different stages, also initiated two statutory moratoria alongside the Mid-Levels Moratorium. We have, therefore, compared their arrangements and assessed their effectiveness with that of the Mid-Levels Moratorium. In our investigation, we have found that over the decades since 1972, Government has undergone a number of major restructuring exercises and these offer important lessons for the present Administration in its merger and reorganization processes.

INVESTIGATION PROCESS

1.5 We have approached this exercise as follows:

(a) studied information from the departments concerned, including old files, reports on traffic studies and statistical analyses;

(b) researched archives in the Government Records Office on the Government organisation at the time, especially those of the former Public Works Department ("PWD") and the subsequent restructuring of various offices;

(c) held discussions with senior officials of the Buildings Department ("BD"), the Planning Department ("Plan D") and a former Director of

Buildings and Lands;

(d) scrutinised details of seven sample buildings in the Mid-Levels Moratorium area;

(e) examined findings of traffic assessment studies;

(f) re-visited the complaint case quoted in para. 1.1; and

(g) analysed 16 submissions from the public.

1.6 This investigation has taken much longer than expected due to a number of factors. Apart from the complexity of the subject matter, we have had to conduct in-depth research into archival materials for background information, trace developments spanning over three decades, considered reports of traffic assessment studies reports, trawl records of meetings and examine case files. In the process, some departments had difficulties in providing the requisite information, especially historical records. It has been necessary to consult former senior officials involved in the implementation of the Mid-Levels Moratorium to piece together the whole picture from the early 1970's to the new millennium.

COMPLETION OF INVESTIGATION

1.7 A draft investigation report was sent on 29 June 2006 to BD, Lands D, Plan D, the Transport Department ("TD"), the Environment, Transport and Works Bureau and the Housing, Planning and Lands Bureau. A meeting with representatives of the above bureaux and departments was held on 27 July 2006. Comments from the bureaux and departments were received on 2 and 4 August 2006.

1.8 Textual amendments on facts have been made in the report where appropriate; other representations are set out in **Annex VI**. This final report was

issued on 11 September 2006.

2

HISTORICAL OVERVIEW: GOVERNMENT ORGANISATION

ADMINISTRATIVE STRUCTURE

2.1 As the Mid-Levels Moratorium dates back to the 1970s, it is first necessary to take a look at the Government set-up at that time. Before 1973, the then Colonial Secretariat was divided into different branches, one of which was the Buildings and Lands Branch[1]. The function of the Branches was to formulate policies, seek and convey decisions from appropriate authorities and to coordinate Government activities in their own particular fields.

2.2 At that time, the then Public Works Department ("PWD") was a mega-structure embracing many "Offices", including Buildings Ordinance Office ("BOO"), Crown Lands & Survey Office ("CLSO") and Town Planning Office ("TPO"). An organisation chart of PWD and its Offices is at **Annex I**. Where possible, PWD devolved day-to-day decisions to individual Offices. Departmental policy and the programming of new projects would remain with the PWD headquarters. Three of these Offices were major players in the administration of the

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[1] The other Branches were Establishment, Finance, Economic, Defence, Councils, Social Services and General.

Mid-Levels Moratorium:

(a) BOO, now BD, for administration of the Buildings Ordinance ("BO");

(b) CLSO, now Lands D, for land administration and lease modification; and

(c) TPO, now Plan D, for planning matters.

2.3 In addition, the Transport Department ("TD"), established in 1968, was responsible for transport management in the 1970s; and took over traffic engineering and transport operation functions from PWD in 1982.

REORGANISATION

2.4 The organisation of Government underwent a series of major restructuring. We summarise below the reorganisation of PWD, its subordinate Offices and the policy Branches, restyled "Bureaux" in 1997, involved in the administration of the Mid-Levels Moratorium.

At Policy Level

2.5 In **1973**, implementation of the McKinsey Report saw the creation of the Environment Branch[2] responsible for policies on a wide range of matters including lands, planning, transport and traffic. In **1982**, the Environment Branch

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[2] The Colonial Secretariat was reorganised into six policy branches: Economic Services, Environment, Home Affairs and Information, Housing, Security and Social Services.

was split into the Lands and Works Branch ("LWB") and the Transport Branch ("TB"). PWD was defederalised and the policy role on buildings, lands and planning was taken over by LWB. TB assumed responsibility for transport policies.

2.6 In **1989**, LWB was split into the Planning, Environment and Lands Branch ("PELB") and the Works Branch. PELB formulated and coordinated policies on buildings, lands and planning, with the Works Branch on physical development of the territory. In **2000**, PELB was reconstituted as the Planning and Lands Bureau with environmental matters going over to a new Environment and Food Bureau.

2.7 With the introduction of the accountability system and further reorganisation of the policy Bureaux in **2002**, the Environment, Transport and Works Bureau ("ETWB") is now the housekeeping bureau for TD among other departments; and the Housing, Planning and Lands Bureau ("HPLB") that for BD, Lands D and Plan D.

At Departmental Level

2.8 Defederalisation of PWD in 1982 meant the emergence of its Offices as autonomous departments. In this context, the transition of the key players in the Mid-Levels Moratorium (para. 2.2) was as follows:

Buildings

Year	Name of Office / Department and composition	Supervising Department/Branch / Bureau
Up to 1982	BOO	PWD

Year	Name of Office / Department and composition	Supervising Department/Branch / Bureau
1982-1986	Building Development Department	LWB
1986-1993	Buildings and Lands Department	LWB (up to 1989) PELB (from 1989)
Since 1993	BD	PELB / Bureau (up to 2000) Planning & Lands Bureau (2000 – 2002) HPLB (since 2002)

Lands

Year	Name of Office / Department and composition	Supervising Department/Branch / Bureau
Up to 1982	CLSO	PWD
1982-1986	Lands D	LWB
1986-1993	Buildings and Lands Department	LWB (up to 1989) PELB (from 1989)
Since 1993	Lands D	PELB / Bureau (up to 2000) Planning & Lands Bureau (2000 – 2002) HPLB (since 2002)

Planning

Year	Name of Office / Department and composition	Supervising Department/Branch / Bureau

Year	Name of Office / Department and composition	Supervising Department/Branch / Bureau
Up to 1973	Planning Branch (in CLSO)	–
1973-1982	Town Planning Office	PWD
1982-1986	Town Planning Division (in Lands D)	LWB
1986-1990	Town Planning Office (in Buildings and Lands Department)	LWB (up to 1989) PELB (from 1989)
Since 1990	Planning Department	PELB / Bureau (up to 2000) Planning & Lands Bureau (2000 – 2002) HPLB (since 2002)

Transport

Year	Name of Office / Department and composition	Supervising Department/Branch / Bureau
1968-1982	Transport Department (exclusively for transport matters)	Environment Branch (1973-1981) Transport Branch (from 1981)
Since 1982	Transport Department (took over traffic engineering and transport operation from PWD)	Transport Branch / Bureau (up to 2002) ETWB (since 2002)

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RESTRICTIONS ON MID-LEVELS DEVELOPMENT

THE MID-LEVELS MORATORIUM

3.1 In the late 1960s, Government was concerned over the impact of development in Pok Fu Lam area on traffic. In October 1969, the then Acting Governor ordered the Administration to produce a report with details of the plan for the future development of that area.

3.2 The subject was considered by the Land Development Planning Committee ("LDPC"), an inter-departmental group under the chairmanship of the then Deputy Colonial Secretary. At that time, LDPC[3] and the Town Planning Board ("TPB")[4] were two bodies responsible for town planning in Hong Kong. LDPC considered and approved outline development plans (which had no statutory effect but were used for formulation of leases, sale of public land and redevelopment of leased land), whereas TPB was responsible for preparing statutory outline zoning plans.

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3 LDPC was chaired by the then Deputy Colonial Secretary and comprised seven officials.

4 In 1972, TPB was chaired by the Director of Public Works and comprised eight officials and five unofficial members.

3.3 There was serious traffic congestion between Pok Fu Lam and the North-West area of Hong Kong Island at the time. Traffic assessment showed that further development or redevelopment in the Pok Fu Lam area would eventually lead to complete blockage of the main route to Aberdeen and the Queen Mary Hospital, then the principal acute general hospital on Hong Kong Island. LDPC, the Commissioner of Police and the Commissioner for Transport supported the view that drastic action was required to curb more intensive development in the area.

3.4 LDPC also considered whether the same bar on development should apply to Mid-Levels since most of the vehicles to and from Pok Fu Lam would pass through Caine Road and Bonham Road. In February 1971, LDPC concluded that no further development should be allowed in Mid-Levels, except projects already well advanced, until the construction of the Aberdeen Tunnel and a new link road to the western part of Hong Kong Island to ease traffic congestion.

3.5 Having considered a report presented by the then Principal Assistant Colonial Secretary (Lands) and the Director of Lands and Survey, the Governor-in-Council approved on 20 June 1972, *inter alia*, the introduction of measures[5] constituting the **Mid-Levels Moratorium** to restrict development in the area:

(a) to defer the sale of public land;

(b) to defer all further lease modification which would give rise to a greater intensity of development; and

(c) to use the powers under the BO and Building Regulations

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[5] The remaining measures relate to the Pok Fu Lam area, which is outside the scope of this direct investigation.

("BR") to prevent more intensive redevelopment where the lease cannot restrict development.

3.6 The Mid-Levels Moratorium applied to an area bounded by Caine Road and Bonham Road in the north, the 700-feet contour above Conduit Road and Po Shan Road in the south, the Hong Kong University and Kotewall Road in the west and Glenealy in the east. A map is at **Annex II.** The Mid-Levels Moratorium was evidently intended to last until the Aberdeen Tunnel and additional road links between Pok Fu Lam and the Western waterfront were included in Category A of Government's Public Works Programmes[6].

3.7 However, a determination of the Appeal Tribunal[7] in late 1972 showed that the BO could not be used to refuse building development on grounds of intensity. In January 1973, the then Director of Public Works ("DPW") as the Building Authority reported the outcome of the appeal to Government.

FIRST STATUTORY MORATORIUM, 1973 - 1978

3.8 In response to DPW's plea, legislation was urgently drafted and passed by the Legislative Council ("LegCo") on 1 August 1973 as the Temporary Restriction on Building Development (Pok Fu Lam and Mid-Levels) Ordinance ("the first statutory moratorium"). This required the Building Authority to refuse all building

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[6] These are works projects which are ready in all respects for tenders to be invited and construction works to proceed.

[7] The Appeal Tribunal determines appeals against any decision made by the Building Authority in the exercise of his discretion.

plans submitted for the first time after 4 July 1973. The intention was for this statutory moratorium to expire automatically on 31 January 1974. In the event, it was extended four times and was not lifted until on 30 April 1978.

SECOND STATUTORY MORATORIUM, 1979-1982

3.9 In 1978 and 1979, Government was concerned over the slope stability in Mid-Levels. In 1979, a Temporary Restriction of Building Development (Mid-Levels) Bill ("the second statutory moratorium"), similar to the first statutory moratorium, was introduced into LegCo. However, this was on geotechnical considerations to stop development until detailed investigation on slope stability was completed.

3.10 The second statutory moratorium required the Building Authority not to:

(a) approve any building plans[8] for works in the Mid-Levels area; or

(b) consent to the commencement of any building works in that area for or involving site formation, street works or any related works,

unless the Governor otherwise directed, in which case the Building Authority might be required to impose conditions in the public interest.

3.11 The Secretary for Lands and Works moved the motion and LegCo agreed to extend the second statutory moratorium twice to 31 July 1982. At the same

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[8] The restriction did not apply to proposals submitted by noon of 22 May 1979.

time, the BO and BR were amended to include additional geotechnical controls over building works in the Mid-Levels area.

PLOT RATIO[9] RESTRICTION, 1990

3.12 In February 1986, when the first draft Mid-Levels West Outline Zoning Plan ("OZP") was gazetted, TPB received 23 objections and requested TD to conduct a traffic study to assist with their deliberation. Completed in November 1986, the study concluded that severe traffic congestion in the Mid-Levels area would occur unless the capacity of the road network was increased and the level of permissible development correspondingly controlled. On TD recommendation, an extensive engineering feasibility study was commissioned by the Highways Department in September 1987 and completed in April 1989. This study concluded that unless traffic generation was reduced, the road network would be overtaxed.

3.13 Having considered the findings of the study, TPB proposed to restrict the plot ratio in "Residential Group (B)[10]" zone covered by the draft Mid-Levels West OZP to 5 or that of the existing buildings, whichever was the greater. TPB then received representations from the Real Estate Developers' Association that it was not fair to impose the proposed restriction without any compensation. Plan D further consulted the bureaux and departments concerned, which provided advice on relevant factors including land use compatibility, drainage and sewerage facilities, traffic,

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[9] Under regulation 21(3) of the Building (Planning) Regulation of BO, plot ratio is calculated by dividing the gross floor area of a building by the area of the site on which it is erected.

[10] This zone is intended primarily for medium-density residential development.

environmental and visual impacts. Taking into account their advice and the need for curbing traffic, maintaining the building character of the area and minimising overload on the drainage and sewerage system, TPB eventually decided to recommend restricting the plot ratio to 5. This restriction, gazetted on 7 September 1990, has been in force since.

3.14 In this exercise, Plan D considered that reducing traffic to avoid overburdening the local road network was not the sole objective of the plot ratio restriction. It was one of the factors taken into account by TPB.

4

EFFECTIVENESS OF MID-LEVELS MORATORIUM

SAMPLE SELECTION

4.1 The Mid-Levels Moratorium to restrict development was intended to ease the serious traffic congestion in the area. To assess its scope for effectiveness, we have examined seven samples from buildings on sites under unrestricted leases, i.e. where redevelopment would not require lease modification and was, therefore, beyond the control of the Mid-Levels Moratorium (para. 3.5(b)). These buildings were found to have been issued with occupation permits between 1982 and 2004.

4.2 We have studied Lands D files on these seven buildings. We have compared the features of the redeveloped buildings (e.g. height, number of storeys and residential units) with those of their predecessors, mainly 4 to 5-storey pre-War buildings.

SAMPLE STUDY

4.3 An analysis of the seven samples is set out in **Annex III**. The

features of the current and their previous buildings are summarized below:

Features / Buildings	Average Height[11]	Average no. of storeys	Average no. of units
Current	98.4m	28.7	142.6
Previous	22m	4.8	21.3

4.4 From these samples, it can be seen that redevelopment has resulted in bigger and taller buildings, with more residential units and hence more traffic in the area covered by the Mid-Levels Moratorium.

RESIDENTIAL UNITS IN MID-LEVELS

4.5 To assess the effectiveness of the Mid-Levels Moratorium together with the two statutory moratoria, we have studied the statistics of files opened for building plans submitted for the first time ("building plan submissions") to BD and its predecessors since the imposition of the Mid-Levels Moratorium in 1972.

4.6 The *Hong Kong Property Review*, published by the City University of Hong Kong, carries information from the Rating and Valuation Department on the completion of private residential units. We have extracted from these annual reviews the number of residential units built in the Mid-Levels area from 1972 to 2001.

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[11] Information on the height of some buildings is not available. Only average figures have been worked out.

4.7 The information mentioned in paras. 4.5 and 4.6 is tabulated below, with some comments on "related event".

Year	Building plan Submissions	Units completed	Related event
1972	27	815	Imposition of Mid-Levels Moratorium
1973	14	890	Imposition of first statutory moratorium
1974	5	1000	
1975	2	1095	
1976	3	390	
1977	7	640	
1978	18	495	Lifting of first statutory moratorium
1979	19	1345	Imposition of second statutory moratorium
1980	11	420	
1981	8	790	
1982	10	155	Lifting of second statutory moratorium
1983	2	625	
1984	1	240	
1985	16	500	
1986	19	665	Gazetting of Mid-Levels West OZP
1987	23	530	
1988	15	1105	
1989	25	2260	
1990	18	815	TPB restricting plot ratio to 5
1991	13	1160	
1992	9	853	
1993	8	2126	
1994	6	2009	

Year	Building plan Submissions	Units completed	Related event
1995	4	916	
1996	6	1187	
1997	2	322	
1998	1	239	
1999	Nil	331	
2000	Nil	422	
2001	Nil	400	
2002	1	NA*	
2003	1	NA*	
2004	2	NA*	
2005	1	NA*	

* From 2002, units in Mid-Levels are included in the data of the Central & Western, Wan Chai and Southern districts.

4.8 The statistics above relate to developments on sites under restricted or unrestricted leases. These indicate the general trend of developments in the Mid-Levels area: that the rise or drop in the number of units completed largely corresponded with the incidence of building plan submissions. The large number of building plan submissions in 1972 was followed by a considerable number of units built in 1974 and 1975. Likewise, the influx of building plan submissions from 1985 to 1993 resulted in the increase in the number of units built between 1988 and 1996.

4.9 The year 1972 (before the first statutory moratorium was enacted in 1973) saw the largest number (27) of building plan submissions. The number dropped sharply in 1974, 1975, 1976 and 1977. It rose in 1978 with the lifting of the first statutory moratorium. A similar decline was apparent over the three years after the imposition of the second statutory moratorium in 1979. The number again increased significantly from 1985 after the lifting of the second statutory moratorium

in 1982.

4.10 It is evident that the Mid-Levels Moratorium was much less effective than the two statutory moratoria in controlling development in the area. Furthermore, it is clear that the number of residential units kept on increasing despite the plot ratio restriction of 5 (para. 3.13).

TD TRAFFIC STUDIES

4.11 Since 1972, eight traffic studies have been conducted or commissioned in the Mid-Levels area:

Objective	Conclusion
Study No. 1 in 1973	
To review the road system and the consequences of new developments in Mid-Levels.	Mid-Levels did not have an adequate transport system to meet the traffic generated by the new developments if the Mid-Levels Moratorium were lifted. Its retention was supported.
Study No. 2 in 1983	
To assess the effect of lifting the Mid-Levels Moratorium.	There would be development potential equivalent to gross floor area of 38,000 square metres if the Mid-Levels Moratorium were lifted.
Study No. 3 in 1986	
The Study was conducted upon the request of TPB.	Having examined the traffic condition in Mid-Levels, the Study did not support lifting of the Mid-Levels

Objective	Conclusion
	Moratorium (para. 3.12).
Study No. 4 in 1989	
To follow up the findings of Study No. 3 and to examine traffic impact of the draft Mid-Levels West OZP gazetted in 1986.	There was limited scope for road improvement due to space constraints and the steep topography of the area. The road network could not cope with the full development permissible under the OZP gazetted in 1986 (para. 3.12).
Study No. 5 in 1993	
To examine whether the Mid-Levels Moratorium could be lifted and whether the plot ratio restriction on R (B) sites (para. 3.13) relaxed.	The Mid-Levels Moratorium should be retained and plot ratio restriction on R(B) sites not relaxed.
Study No. 6 in 1996	
To assess the traffic impact of the Western Harbour Crossing and associated road network including Mid-Levels.	Opening of the Western Harbour Crossing would not relieve traffic congestion in the Mid-Levels area. Lifting of the Mid-Levels Moratorium was not supported.
Study No. 7 in 1996	
To explore the feasibility of building a new road link from Mid-Levels to Western District.	Building a new road link was not feasible due to severe site constraints and unacceptable environmental impact.
Study No. 8 in 2005	
To assess the existing traffic condition within the Mid-Levels Moratorium area.	There is a need to suppress the traffic demand in the Mid-Levels area. The Mid-Levels Moratorium should remain in force on traffic grounds.

4.12 These studies show that, even with the Mid-Levels Moratorium in place, the traffic condition in Mid-Levels has never been satisfactory over the years. TD attributed this phenomenon to the existence of development sites outside the control of the Mid-Levels Moratorium:

(a) sites under unrestricted leases; and

(b) sites with further development intensity permissible under the OZP.

4.13 The eighth traffic study completed in 2005 has painted a gloomy picture of the traffic condition in the area. Major findings of this assessment are summarised below:

(a) all major junctions have accumulated traffic trails;

(b) travel speeds on almost all road sections are lower than the average 21.8 km/h on Hong Kong Island;

(c) the practical maximum capacity of the road network has been reached;

(d) the traffic within the area would deteriorate if the Mid-Levels Moratorium were lifted.

4.14 Tables showing travel speeds in the Mid-Levels area from 1984 – 2004 are at **Annex IV and V**. The most critical traffic flow in the area is eastbound traffic in the morning peak hour at crawling speeds (**Annex V**).

LIMITATIONS

4.15 Having studied information from BD, Lands D, Plan D and TD, we note that the Mid-Levels Moratorium had inherent limitations from the outset.

These include:

(a) Only four Government sites were "uncommitted", which means that there was in fact little public land that Government could defer selling under the Mid-Levels Moratorium (para. 3.5(a)).

(b) Most sites in the Mid-Levels area are under unrestricted leases, for which lease modification is not necessary for redevelopment (para. 3.5(b)).

(c) The application of the BO and BR intended to support the Mid-Levels Moratorium was found to be ineffective against unrestricted leases (para. 3.5(c) and 3.7). It was, therefore, necessary to enact the statutory moratoria (paras 3.8-3.9).

4.16 Government intended the Mid-Levels Moratorium to ease traffic congestion by restraining development and redevelopment, thereby containing the population and traffic in the area. Developments and redevelopments have, however, continued unabated, thus increasing the resident population density and the traffic volume in Mid-Levels.

4.17 Apart from the inherent limitations, other factors have contributed to the failure of the Mid-Levels Moratorium to restrict development intensity.

5

INPUT BY DEPARTMENTS

DEPARTMENTAL ROLES

5.1 A number of departments and branches/bureaux have been involved with the Mid-Levels Moratorium over the decades. However, despite the claim of steering by some coordinating body, efforts by some of the departments proved to be inadequate, perhaps even counter-productive. Unquestionably, the situation has been complicated by the multiple metamorphoses of the Government structure over the years.

5.2 Each of the departments - BD, Lands D, Plan D and TD - has a role related to the Mid-Levels Moratorium (para. 2.2 –2.3):

(a) **Buildings**: enforcement of the BO and the two statutory moratoria (paras. 3.8 – 3.11);

(b) **Planning**: processing planning applications under OZPs for the Mid-Levels area;

(c) **Lands**: sale of Government land and lease modifications (paras. 3.5(a) and (b)); and

(d) **Transport**: assessment of traffic condition in the Mid-Levels Moratorium area and to recommend traffic improvement measures. (para. 4.11)

Buildings

5.3 BD has admitted that the BO did not provide sufficient powers to stop more intensive development for the purpose of the Mid-Levels Moratorium (para 3.7). BD and its predecessors were responsible for enforcement of the two statutory moratoria (paras. 3.8 and 3.9). When the second statutory moratorium based on geotechnical considerations lapsed in 1982, the BO and BR were amended at the same time to incorporate a set of geotechnical controls of building development in Mid-Levels (para. 3.11).

5.4 In the circumstances, the role of BD in the administration of the Mid-Levels Moratorium has always been related to the enforcement of the statutory moratoria, the BO and BR.

Planning

5.5 Plan D (and its predecessors), being the executive arm of TPB, acts as a bridge for the public, the departments concerned and TPB on town planning matters. Plan D considers itself and TPB to have no direct role in the implementation of the Mid-Levels Moratorium.

5.6 However, we see enforcement of development intensity through statutory control under OZPs and processing of planning applications to be properly within the purview of Plan D.

5.7 Since its gazettal in February 1986, the Mid-Levels West OZP has

been amended on nine occasions, one of which was to impose the plot ratio restriction in 1990 (paras. 3.12 – 3.13). The remaining amendments were mainly to rezone specific sites. Meanwhile, Plan D/TPB has received 67 planning applications of which 23 were rejected for such reasons as:

(a) aggravation of traffic flow in the Mid-Levels area;

(b) excessive intensity of development; and

(c) proposed relaxation of planning requirements in terms of building height or plot ratio not considered as minor.

5.8 In processing the above planning applications, Plan D had consulted the relevant bureaux and departments, including TD and Lands D, for comments for submission to TPB. The practical result is that Plan D and TPB do take account of the Mid-Levels Moratorium in considering planning applications, albeit among such factors as land use compatibility, traffic, environmental and visual impacts.

Lands

5.9 Lands D (and its predecessors) as the Lands Authority has been responsible for land sale and lease modification. We have attempted to obtain from Lands D statistics on:

(a) applications for development or redevelopment of sites in Mid-Levels since 1972; and

(b) rejection of such applications on grounds of the Mid-Levels Moratorium.

Lands D explained that collection of such data would entail trawling all related files over the last 33 years. In the event, we did not insist on getting the information since Lands D obviously has not kept statistics relating to enforcement of the Mid-Levels Moratorium.

5.10 Deferment of lease modification as one of the three components of the Mid-Levels Moratorium (para. 3.5(b)) could have indeed helped to prevent more intensive development. However, our investigation into a complaint, cited below, found that Lands D had adopted a somewhat "liberal" approach (or "loose" attitude) to lease modification and in determining the development intensity for the area quite contrary to the intention of the Mid-Levels Moratorium. This raises questions over Lands D's determination to uphold the spirit of the Mid-Levels Moratorium.

Case Study

5.11 A Mid-Levels site comprising two lots shared a common lease that imposed a height limit of 35 feet on any building on the site. In addition, the maximum permitted height for any building there under the OZP, was ten storeys above carports or the height of the existing buildings, whichever was the greater. One of the lots was the subject of a complaint to our Office (para. 1.1).

5.12 Lands D had, in this case, determined the scale of maximum development permissible by way of a "notional scheme" submitted by a developer, i.e. a hypothetical design to determine the maximum gross floor area permitted within the limit of the lease. With approval of the notional scheme, the developer applied to Lands D for lease modification to remove the 35-feet height restriction. In the event, Lands D approved a multi-storey building higher than 35 feet with the same gross floor area. In allowing the ten storeys permissible under OZP, Lands D did not take into account any floor predominantly used for entrance lobby, carport, covered landscape/play area and machine rooms.

5.13 This enabled the site, meant originally for one "house", to be

developed into a condominium with two towers, each ten storeys high above three levels of carports and other facilities. The many more residential units on the site than before could only be seen as constituting greater intensity of development and a potential increase in population and traffic.

5.14 Records show that different departments had divergent views on how the proposed development should be considered in the context of the Mid-Levels Moratorium. Plan D and TD were concerned over the impact on the traffic and infrastructure in the area. Lands D emphasised the land owner's rights to achieve the maximum development permissible on the site. It considered the Mid-Levels Moratorium only an administrative measure not restricting existing property rights. "More intensive development" was thus taken by Lands D to mean "development with floor space in excess of the amount of floor space that an owner can achieve having regard to the terms and conditions of the lease governing the lot (before any lease modification)" and subject to the BO. The "development intensity" was thus determined by reference to the maximum achievable under the lease, not that of the original buildings on the site.

5.15 Lands D's approach thus allowed multi-storey buildings on the site, increasing the number of residents in the area. This can hardly be an attempt to minimise traffic generation or to be in keeping with the intention of the Mid-Levels Moratorium.

5.16 As Lands D could not provide statistics on the applications (and instances of rejection) for lease modification in the Mid-Levels area since 1972, we cannot tell how many applications had been similarly processed.

Transport

5.17 Eight traffic studies were undertaken in the Mid-Levels area (para.4.11). These studies generally concluded that the access and traffic problems in the Mid-Levels area were serious and hence did not support the lifting of the Mid-Levels Moratorium.

5.18 Ostensibly, avoidance of traffic congestion was the stated objective of the Mid-Levels Moratorium. It was therefore quite proper and necessary for TD to carry out these traffic studies. However, apart from maintaining the *status quo*, these studies had no other discernible impact on the action of Government in reviewing or strengthening the Mid-Levels Moratorium.

ROLES OF BRANCHES/BUREAUX

5.19 The proposal to restrict development in Mid-Levels was made by the LDPC chaired by the then Deputy Colonial Secretary (para. 3.4). The report that culminated in the Mid-Levels Moratorium was presented to the Governor-in-Council by the Buildings and Lands Branch of the then Colonial Secretariat and CLSO under PWD (para. 3.5). DPW moved the motion to enact the statutory moratoria (paras. 3.8 and 3.9). At that time, the leading and coordinating role of PWD and the then Colonial Secretariat (now the Government Secretariat) in implementing the moratoria was clear, well-defined and effective.

5.20 However, with the subsequent restructuring of the then Colonial Secretariat (para. 2.6) and defederalisation of PWD (para. 2.8) in 1982, the policy responsibilities for transport on the one hand and lands, buildings and planning on the other have been split. Recently, ETWB has acknowledged its role as the lead bureau

in coordinating and overseeing the implementation of the Mid-Levels Moratorium. However, neither the Bureau nor its predecessors have demonstrated the necessary leadership or initiative by calling for a comprehensive review or directing the departments concerned to implement the Mid-Levels Moratorium more stringently and effectively. It appears that the strong leading and coordinating role of PWD and the then Colonial Secretariat, in the administration of the Mid-Levels Moratorium unwittingly lapsed after 1982.

ADMINISTRATION BY DEFAULT

5.21 To sum up, since the 1982 restructuring (paras. 2.5 and 2.8), leadership and coordination have been lacking in the implementation of the Mid-Levels Moratorium. As a result, each of the departments concerned has been left to develop its own strategy and to mind its own business (各自爲政).

6

MONITORING, ASSESSMENT AND REVIEW

MONITORING

6.1 The eight traffic studies undertaken by TD (para.4.11) have come to a practically self-induced conclusion: that access and traffic problems in the Mid-Levels area have remained serious. Although the studies have concluded that the Mid-Levels Moratorium should not be lifted (paras. 4.12 – 4.14), they have played little part in monitoring the implementation of the Mid-Levels Moratorium to restrict development in the area. Their findings seem to have been of only passing interest to Government. Bluntly put, the need for restricting development by the Mid-Levels Moratorium seems to have been forgotten by Government.

6.2 Lands D is unable to produce statistics on refusal of development or redevelopment on grounds of the Mid-Levels Moratorium (para 5.9). Probably such applications were far and few in the years before 1982 due to the existence of the first and second statutory moratoria. We cannot establish whether the approach adopted by Lands D after 1982 in the context of the Mid-Levels Moratorium has been

monitored, or even noted, by the coordinating branch/bureau (now ETWB) or its own policy branch/bureau (now HPLB) to ensure consistency with the stated objective of the Mid-Levels Moratorium.

ASSESSMENT

6.3 In the 1970s, once difficulties were encountered in enforcing the Mid-Levels Moratorium, Government acted promptly by introducing and extending the first statutory moratorium (para. 3.8). Although the second statutory moratorium was adopted on geotechnical grounds, it did incidentally serve the purpose of restricting development in the area. It is evident that Government did regularly assess the situation during the initial ten years of implementation. However, we do not find evidence of any deliberate or positive action for regular assessment after 1982.

REVIEW

6.4 In 1981 and 1982 respectively, the Hill Road Flyover and the Aberdeen Tunnel were opened to traffic. The traffic study No. 2 in 1983 did not make any concrete recommendation as to whether the Mid-Levels Moratorium should be lifted or reinforced (para. 4.11). If a proper review had been conducted at the time, the Administration might have noted that development or redevelopment of sites under unrestricted leases had been unrestrained with the lapse of the second statutory moratorium in 1982 and that this would aggravate, not alleviate, the traffic problem. In 1984, the Transport Branch **did** consider that lifting the Mid-Levels Moratorium would have only insignificant impact on traffic condition. However, subsequent traffic studies did not support lifting it (para. 4.11).

6.5 TPB's recommendation to restrict the plot ratio in 1990 (para 3.13) aimed in part to ease traffic congestion, based on the findings of the third traffic study in 1986 (para. 4.11). However, this was not a coordinated or concerted review of the Mid-Levels Moratorium (para. 3.13). Meanwhile, the number of residential units in the Mid-Levels area continued to increase (para. 4.7) despite the Mid-Levels Moratorium and the plot ratio restriction.

6.6 We note that, in May 2005, Lands D undertook a review of sites with redevelopment potential in the Mid-Levels Moratorium area. Major findings[12] of the study are:

(a) 147 private sites were held under unrestricted leases and hence not affected by the Mid-Levels Moratorium These sites were capable of generating a net additional gross floor area ("GFA") of about 273,200 square metres.

(b) If the Mid-Levels Moratorium were lifted, an additional 28 private sites held under restricted leases would have redevelopment potential to generate a net additional GFA of about 85,900 square metres. Another 52,500 square metres could be generated from the sale of four Government sites. In total, a net additional GFA of about 138,400 square metres (capable of accommodating 1,330 residential units of 104 square metres each) would be generated by lifting of the Mid-Levels Moratorium.

6.7 The 2005 traffic study, as with its predecessors, was to estimate the

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12 Data supplied by TD for the eighth traffic study.

impact of lifting the Mid-Levels Moratorium. However, there has not been any review of the actual impact on development/redevelopment in the area since 1982. Given Government's stated objective of the Mid-Levels Moratorium, it is surprising that it has not undertaken periodic reviews of its implementation.

7

ACTION FOR FOLLOW-THROUGH

DEPARTMENTAL RESPONSIBILITIES

Successive Reorganisation

7.1 In the 1970s, one policy branch (the Buildings and Lands Branch followed by the Environment Branch) had policy responsibility over lands, planning, traffic and transport matters with a single operational department, i.e. PWD overseeing lands, traffic engineering, town planning and buildings matters. PWD was the *de facto* overall coordinator for the introduction and implementation of the Moratorium and the statutory moratoria. However, the major Government restructuring exercises in 1982 split the land and traffic/transport policies between different branches and defederalised PWD (paras. 2.5 and 2.8). In effect, this demolished central coordination without an effective replacement mechanism. There was not even an inter-bureau or inter-departmental working group for monitoring the implementation of the Mid-Levels Moratorium.

Coordination Problems

7.2 The different phases of reorganisation over 32 years inevitably

changed the relationships between departments and their supervising branches/bureaux and among the departments themselves, with each developing its own strategy over the years (para. 5.21).

7.3 Poor coordination has resulted in the following:

(a) There was no regular and comprehensive review to assess the effectiveness of the Mid-Levels Moratorium (para. 6.7). If a proper review had been conducted in the early 1980s, the Administration would have noted that sites under unrestricted leases could be restrained only by statutory measures (para. 6.4).

(b) The use of plot ratio restriction as planning control mechanism was helpful but belated. The first draft Mid-Levels West OZP was gazetted in 1986 and the plot ratio restriction in 1990, eight years after the lifting of the second statutory moratorium (para. 3.13).

(c) More effective restriction on development intensity could have been achieved through more stringent planning control (paras. 5.6 and 6.5) but somehow was not considered.

(d) The number of residential units completed increased, despite the Mid-Levels Moratorium and the plot ratio restriction. (para. 4.7).

(e) The "liberal" or "loose" approach adopted by Lands D to lease modification does not seem to have been monitored by the coordinating branch/bureau (now ETWB) or its own policy branch/bureau (now HPLB) (para. 5.10).

(f) The traffic studies did not have any significant impact on

Government action to revise or even review the Mid-Levels Moratorium (para. 5.18).

POINTS FOR REFERENCE

7.4 With the recent and upcoming mergers and reorganisations within Government, the Administration should take reference from the Mid-Levels Moratorium. It is important that Government should ensure continuity and coordination of action, review and revision of policies.

8

PUBLIC REACTIONS

REACTIONS AT THE TIME

8.1 When the Mid-Levels Moratorium was introduced, a newspaper editorial billed the bar on building plans as "an act of desperation – laudable in intent but far too limited and too late". However, some Unofficial Members of LegCo strongly opposed both the Mid-Levels Moratorium and the first statutory moratorium for the following reasons:

(a) The Mid-Levels Moratorium delayed the provision of much needed housing.

(b) It derogated the rights granted by the lease to a private owner to build in accordance with the lease conditions.

(c) Road improvement and traffic management should suffice to resolve traffic congestion problems.

PUBLIC EXPECTATIONS NOW

8.2 In response to The Ombudsman's invitation for public comments on this direct investigation, 16 submissions have been received from:

(a) four commercial or professional organisations of the realty

development sector;

(b) three individuals in engineering/property development;

(c) one District Council Member; and

(d) eight property owners and residents in the Mid-Levels area.

8.3 All submissions focused on whether the Mid-Levels Moratorium should be retained. All those from (d) were in favour of its retention and the others from (a) and (b), against. Their arguments are summarised below.

8.4 Those in favour of retaining the Mid-Levels Moratorium contend as follows:

(a) The Moratorium should continue for better traffic flow, public safety and prevention of over-development.

(b) Government has not been enforcing it faithfully.

(c) Government should publicise the objectives and the terms of the Moratorium for transparency.

(d) Any decision to relax or rescind the Moratorium must be subject to full public consultation.

8.5 Those against it make the following points:

(a) It is unreasonable to maintain the Moratorium for more than 30 years without solving the traffic congestion problem.

(b) It is of very limited significance as it applies to only a few sites in the area. Even if major relaxation is allowed for redevelopment of those sites, the resultant increase in traffic flow will have little impact on the nearby road network. To isolate those sites for application of the Moratorium is unfair to the developers.

(c) The statutory OZPs and the Town Planning Ordinance are adequate checks. Provided the OZPs are regularly updated in the light of changing circumstances, Government is sufficiently armed to control development intensity in the Mid-Levels area.

(d) The Moratorium, being an administrative measure, should not override the Town Planning Ordinance. The need for the two to co-exist is questioned.

(e) Central District and Causeway Bay (especially around Times Square) are the most congested areas on the Hong Kong Island. For the sake of equity and consistency, Government should either impose moratoria on those areas or rescind the Moratorium.

8.6 Some property owners and residents have specifically expressed dissatisfaction with the departments concerned on the application of the Mid-Levels Moratorium with reference to particular sites.

8.7 These public submissions represent two opposing bodies of opinions. Having regard to the interests of the respondents, we can understand their different stances and sentiments. One view is common, nevertheless: no one has acknowledged any "benefit" from the Mid-Levels Moratorium to easing traffic congestion in the Mid-Levels area. Given its stated objective, the Mid-Levels Moratorium has not been, and is certainly not seen to have been, successful.

9

CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS

9.1 This direct investigation examines the effectiveness of the implementation of the Mid-Levels Moratorium. Our focus is on public administration aspects, namely, its enforcement and effectiveness in meeting the stated objective. In this context, it remains a policy decision for Government whether or not to continue with the Mid-Levels Moratorium.

9.2 The Mid-Levels Moratorium was well-intentioned, to ease traffic congestion pending improvement to the road network. However, it was ill-conceived and poorly planned as its initiator(s) apparently was (were) not fully aware of (or did not properly focus on) the inherent limitations to its effectiveness. In particular, they do not seem to have taken on board the fact that most sites in the area are under unrestricted leases (para 4.15(b)). Moreover, the need for continuity of responsibility and effective coordination was apparently overlooked in Government's multiple restructuring and insufficient efforts were put in by the branch/bureau supposed to coordinate (now ETWB); the branches/bureaux and departments concerned have each been attending essentially to its own turf (para.

5.21). Meanwhile, with Lands D's "liberal" approach to lease modification (para 5.10), the Mid-Levels Moratorium has been loosely administered. The Mid-Levels Moratorium was poorly coordinated (para. 7.3) and inefficiently monitored (paras. 6.1 - 6.2). Consequently, its effect was not adequately assessed (para. 6.3) or properly reviewed (para. 6.7).

9.3 Against such background and on Government's stated objective of restricting development in Mid-Levels (para. 3.5), the Moratorium was practically doomed to fail from the outset.

RECOMMENDATIONS

9.4 In this light, The Ombudsman makes the following recommendations.

Effectiveness

(a) The bureaux and departments concerned should take stock of all relevant developments and changes in circumstances, particularly those post-1982, and consider what measures are necessary to supplement, strengthen or replace the Mid-Levels Moratorium (para. 7.3).

Coordination and Delineation of Responsibilities

(b) The coordinating body (currently ETWB) should:

(i) review the need, or otherwise, for the continuation of the Mid-Levels Moratorium (para. 4.16); and

(ii) if such need is established, give clear guidelines to the bureaux and departments concerned for proper implementation and close cooperation in coordination (paras. 5.19 –5.21).

Transparency

(c) On completion of the review, Government should make a clear statement on the way forward.

(d) Thereafter, the bureaux and departments concerned should keep the public posted on developments or changes from time to time.

IMPACT OF REORGANISATION

9.5 This case and its development over the decades offer invaluable experience for reference in future reorganization of the Government structure (para 7.4). The problem has stemmed partly from insufficient attention:

- to re-examining the objective and original intent of a policy;
- to setting up a proper coordinating mechanism for implementation and monitoring, assessment and review (para. 7.1); and
- to ensuring continuity of these responsibilities and coordination of implementation even with Government reorganisation and restructuring.

We believe that these positive lessons should be heeded.

10

FINAL REMARKS

COMMENTS FROM BUREAUX AND DEPARTMENTS

10.1 The bureaux and departments concerned have made detailed comments on our draft report. Those from BD, Plan D and TD were essentially requests for minor textual amendments. They have already been duly incorporated in the report. The representations from ETWB, HPLB and Lands D and The Ombudsman's response are tabulated at **Annex VI.**

FINAL REMARKS FROM THE OMBUDSMAN

10.2 In sum, The Ombudsman maintains her stance in this report.

10.3 The Ombudsman is aware that the Mid-Levels Moratorium was introduced more than 30 years ago. Some of her comments are, therefore, directed at former branches/bureaux and departments, not the current incumbents. Nevertheless, this offers a useful lesson to all concerned in terms of the need for a proper mechanism for coordinating and monitoring, assessing and reviewing the implementation of multi-bureau or multi-departmental policies. After all, however many bureaux or departments may be involved in a policy or project, the community will see it as an act by Government as a whole.

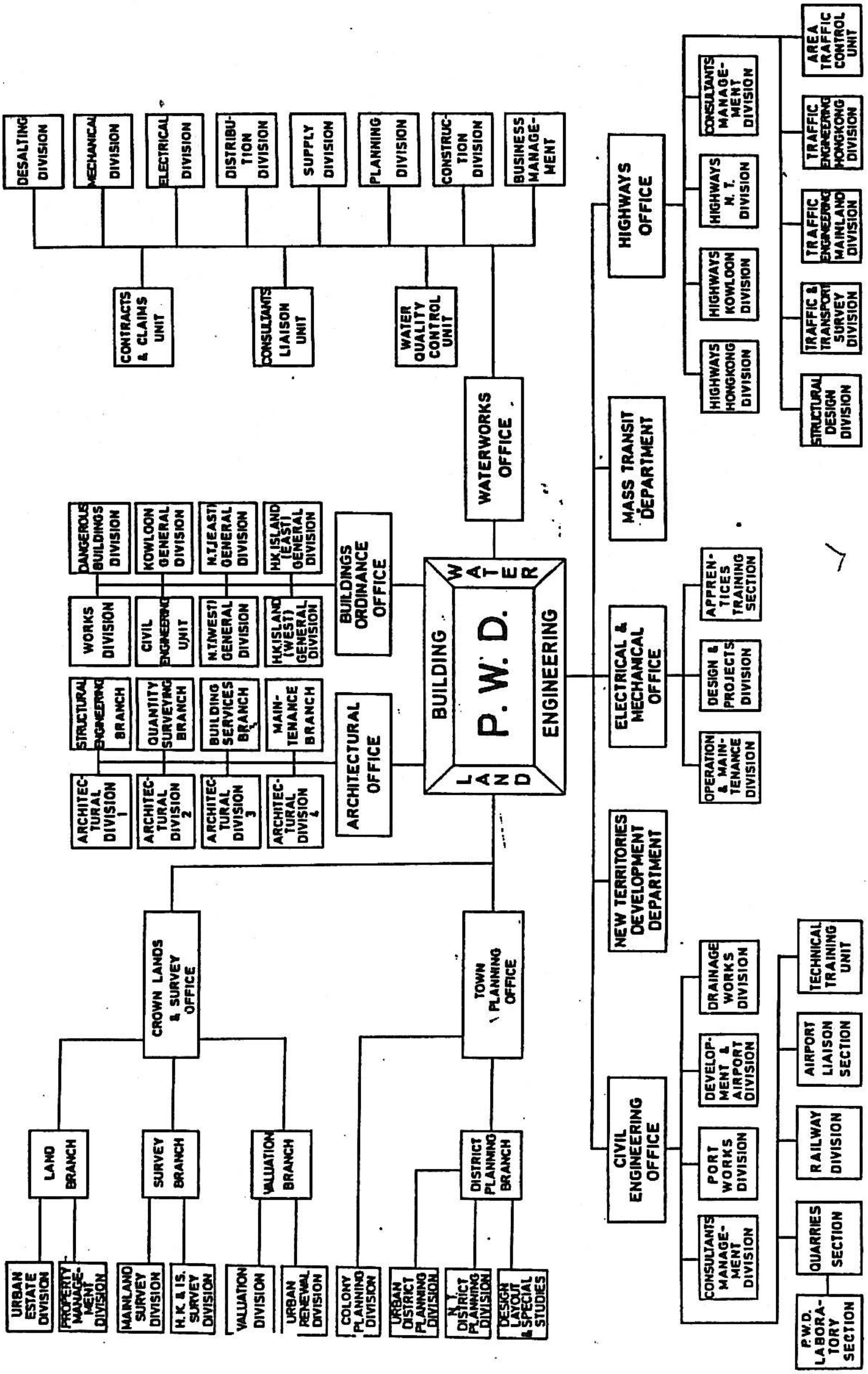
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LIST OF ANNEXES

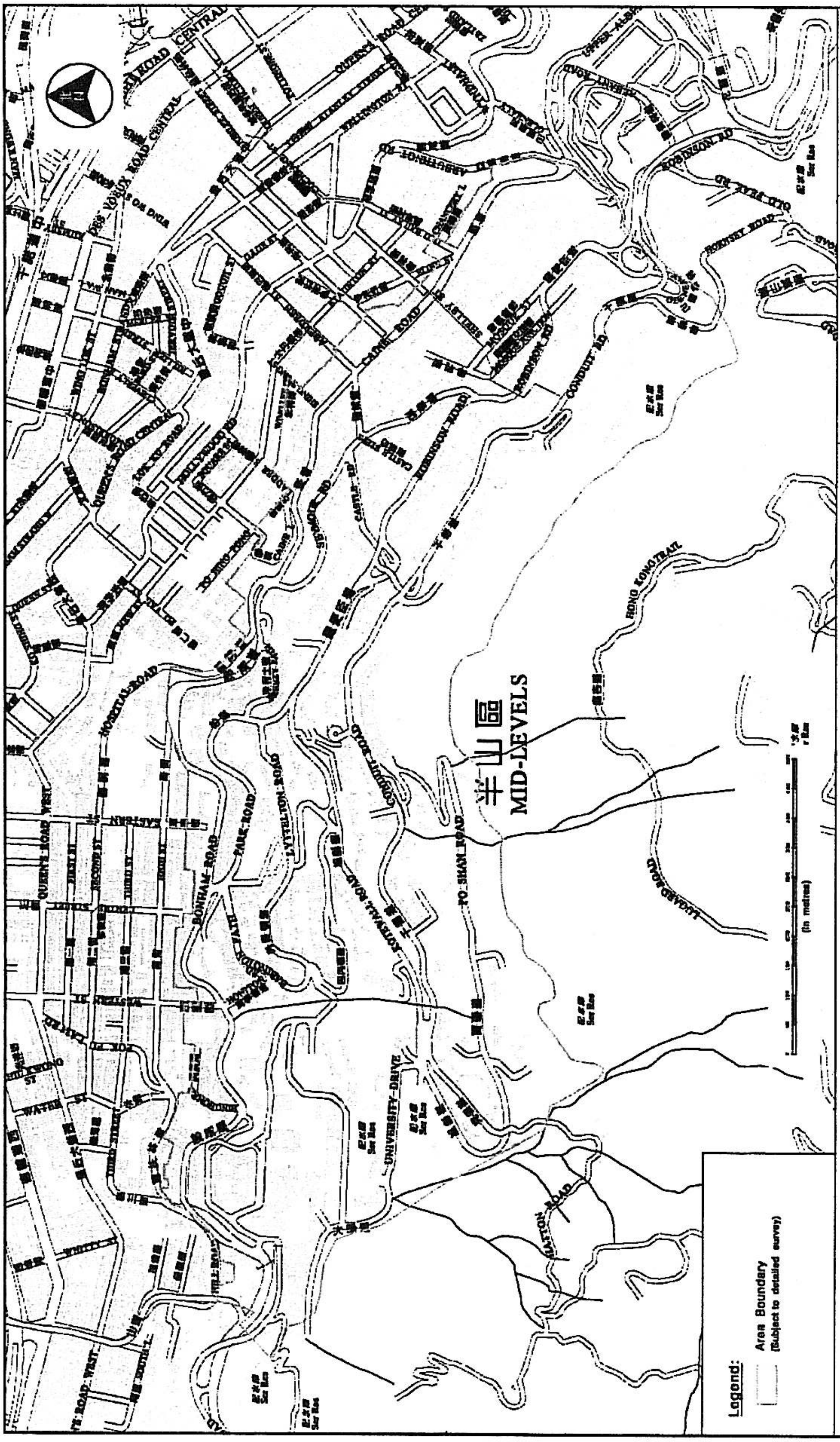
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Annex I
(para. 2.2)



OPERATION AND ORGANIZATION OF PUBLIC WORKS DEPARTMENT
HONG KONG 1974

Annex II
(para. 3.6)



Mid-levels Moratorium Administrative Area

Source: TD

Annex III
(para. 4.3)

Sample Buildings: Summary of Redevelopment

Building No. 1

	Current Buildings	Previous Buildings
Lease status	Lot 1 : 997 years; Lot 2 : 75 years (renewable for 75 years). Both lots unrestricted	-do-
Building height	101.741m	19m for one building and no record for other buildings[1]
Residential storeys	34	One building with 5 storeys and three with 4 storeys
Carpark levels	2	-
No. of units	180	5 units for one building and no record for other buildings[1]
Domestic plot ratio	9.878	No record[1]
Year of occupation permit ("OP") or domestic permits ("DP")	OP 1987	DP 1956 for one building. No record for other buildings
Remarks	Redevelopment submitted in 1963. Inaction between 1963 to 1979. No record of consideration of the Mid-Levels Moratorium.	Pre-war buildings

Building No. 2

	Current Buildings	Previous Buildings
Lease status	999 years unrestricted	-do-
Building height	96.95m	No record[1]
Residential storeys	26	4 per building[2] (8 buildings)
Carpark levels	4	-
No. of units	208	No record[1]
Domestic plot ratio	8.147	No record[1]
Year of occupation permit ("OP") or domestic permits ("DP")	OP 1988	DP 1952 for one building. No record for other buildings
Remarks	There were references to the Mid-Levels Moratorium in	8 pre-War buildings on site during redevelopment in 1978, plus 3

	processing the redevelopment application. However, the focus of debate with the developer was on number of amalgamated sites rather than the Mid-Levels Moratorium.	other vacant sites.

Building No. 3

	Current Buildings	Previous Buildings
Lease status	999 years unrestricted	-do-
Building height	80.2m	No record[2]
Residential storeys	24	No record[2]
Carpark levels	3	-
No. of units	72	No record[2]
Domestic plot ratio	7.997	Unknown
Year of occupation permit ("OP") or domestic permits ("DP")	OP 1988	DP 1955
Remarks	File opened in 1978. No record of consideration of the Mid-Levels Moratorium.	File cannot be located.

Building No. 4

	Current Buildings	Previous Buildings
Lease status	999 years unrestricted	-do-
Building height	92.945m	(a) 15.316m (b) 14.325m
Residential storeys	31	(a) 4 (b) 4
Carpark levels	1	(a) - (b) -
No. of units	124	(a) 8 (b) 12
Domestic plot ratio	9.772	(a) No record (controlled by volume of the building) (b) No record (controlled by roof-covered area)
Year of occupation permit ("OP") or domestic permits ("DP")	OP 1992	(a) OP 1964 (b) DP 1954

Remarks	File opened in 1974 but remained inactive until 1986. No record of consideration of the Mid-Levels Moratorium.	Two buildings

Building No. 5

	Current Buildings	Previous Buildings
Lease status	999 years unrestricted	-do-
Building height	83.6m	39.395m
Residential storeys	27	6
Carpark levels	1	-
No. of units	100	24
Domestic plot ratio	9.998	No record (controlled by volume of the building)
Year of occupation permit ("OP") or domestic permits ("DP")	OP 1993	OP 1965
Remarks	File opened in 1971 but remained inactive until 1986. No record of consideration of the Mid-Levels Moratorium.	

Building No. 6

	Current Buildings	Previous Buildings
Lease status	999 years unrestricted	-do-
Building height	92.355m	19.202m
Residential storeys	25	5
Carpark levels	4	-
No. of units	50	20
Domestic plot ratio	8.818	No record (control by roof-covered area)
Year of occupation permit ("OP") or domestic permits ("DP")	OP 1991	DP 1955
Remarks	File opened in 1965 but remained inactive until 1979. No record of consideration of the Mid-Levels Moratorium.	

Building No. 7

	Current Buildings	Previous Buildings
Lease status	999 years unrestricted	-do-
Building height	141.115m (Block 1) 147.065m (Block 2)	21.717m
Residential storeys	34	No record
Carpark levels	7	-
No. of units	264	Not applicable
Domestic plot ratio	5	Not applicable
Year of occupation permit ("OP") or domestic permits ("DP")	OP 2001	Non-DP 1950 DP1950
Remarks	The redevelopment application was processed through TPB procedures. The TPB paper recorded a comment from the District Land Officer that since the site was within the Mid-Levels Moratorium area, more intensive redevelopment was not acceptable.	A non-residential building.

Notes 1: For pre-War buildings, there are basically no records of occupation permit, number of units and building height. The numbers of storeys of some was found from records of inspection during redevelopment.

2: BD information centre has no file records.

Annex IV
(para. 4.14)

Travel Speeds (km/hr) within Study Area
(from 1984 to 2004)

Year within which the Car Journey Time Survey was taken	Average Speed of Hong Kong Island	From → To	Pok Fu Lam Road → Park Road	Park Road → Seymour Road	Seymour Road → Castle Road	Castle Road → Arbuthnot Road	Average Speed of Bonham Road and Caine Road	Castle Road → Seymour Road	Seymour Road → Glenealy	Average Speed of Robinson Road
1984	24.2		23.4	18.9	12.7	15.1	17.3	35.6	18.0	23.0
1987	21.3		18.9	17.0	9.9	18.1	15.5	35.6	20.6	25.3
1988	20.0		15.3	11.4	11.0	11.8	12.3	25.0	21.6	23.0
1989	19.6		9.4	12.8	11.9	22.0	12.4	24.7	19.1	21.3
1990	20.0		24.3	18.4	22.8	13.8	19.1	25.3	26.9	26.2
1991	21.5		23.1	23.1	9.1	18.3	17.0	15.1	24.2	19.1
1992	21.8		18.7	25.0	10.7	16.7	17.0	18.4	18.3	18.4
1993	20.6		20.3	17.3	6.5	17.0	13.4	26.6	12.3	16.2
1994	20.3		21.5	13.9	6.3	18.0	12.7	17.4	7.9	10.4
1995	20.4		19.9	21.4	7.5	13.1	14.0	7.7	5.5	6.3
1996	19.2		15.1	8.6	5.5	10.1	9.0	2.9	4.8	3.7
1997	21.2		18.4	24.1	6.8	11.1	13.1	13.9	9.2	10.8
1998	20.9		15.2	15.4	6.4	9.0	10.7	7.6	8.6	8.1
1999	20.5		16.9	14.8	5.4	11.5	10.8	12.2	9.5	10.5
2000	20.8		14.3	13.6	10.1	13.8	12.9	7.3	9.9	8.5
2001	21.8		12.5	15.8	12.5	14.1	13.7	8.9	7.7	8.2
2002	22.2		23.1	15.0	8.8	13.9	14.2	22.8	12.5	15.6
2003	21.7		16.2	13.1	7.0	12.7	11.6	28.4	9.1	13.1
2004	21.8		18.7	20.5	11.0	15.1	15.8	16.2	12.1	13.6

Note :- Since 1987, TD has conducted the "Car Journey Time Survey for Monitoring Traffic Congestion" annually. Before 1987, similar surveys were conducted in 1979 and 1984. The result of 1984 survey is also included in this tabulation.

Source: TD

Annex V
(para. 4.14)

Critical Traffic along Caine Road and Conduit Road (from 1984 to 2004)
(Count Stations No. 1013 and 1105)

	Critical Traffic along Caine Road# (Count Station No. 1013)				Critical Traffic along Conduit Road (Count Station No. 1105)			
	AM Peak (veh/h)		PM Peak (veh/h)		AM Peak (veh/h)		PM Peak (veh/h)	
Year	E/B	P/Df	E/B	P/Df	E/B	P/Df	W/B	P/Df
*1984	840	2.10	—	—	—	—	628	1.57
*1985	872	2.18	—	—	—	—	470	1.18
*1986	722	1.81	—	—	—	—	467	1.17
*1987	—	—	838	2.10	—	—	490	1.23
*1988	804	2.01	—	—	—	—	580	1.45
*1989	—	—	539	1.35	—	—	503	1.26
*1990	—	—	561	1.40	571	1.43	—	—
*1991	—	—	520	1.30	—	—	499	1.25
*1992	—	—	542	1.36	622	1.56	—	—
*1993	—	—	634	1.59	777	1.94	—	—
*1994	—	—	638	1.60	724	1.81	—	—
*1995	—	—	625	1.56	749	1.87	—	—
*1996	—	—	605	1.51	761	1.90	—	—
*1997	—	—	589	1.47	728	1.82	—	—
*1998	—	—	585	1.46	688	1.72	—	—
*1999	—	—	585	1.46	—	—	534	1.34
2000	540	1.35	540	1.35	590	1.48	470	1.18
2001	550	1.38	540	1.35	580	1.45	460	1.15
2002	560	1.40	530	1.33	560	1.40	460	1.15
2003	550	1.38	530	1.33	560	1.40	450	1.13

Note:

1. * Before 1999, the Annual Traffic Census only indicates peak hourly traffic of the day (i.e. only the hour with maximum hourly traffic is shown, therefore only either AM peak hourly traffic or PM peak hourly traffic is available). From 2000 onward, peak hourly traffics during both AM and PM periods are computed. The peak hourly traffic only reflects the traffic going through the survey point. The figure might not be able to reflect the actual traffic demand where there are extensive traffic queues.
2. # There is a "Bus Only Lane" on Caine Road westbound from 7:00am to 7:00pm on weekdays and from 7:00am to 1:00pm on Saturdays, except General Holidays. Hence only E/B figures are shown.
3. Design Flow of single-lane local carriageway is 400 pcu/hr.
4. P/Df : Peak Hourly Flow / Design Flow Ratio.
5. The general implications of P/Df ratio are as follows :-

P/Df	General Traffic Conditions
0.75 – 1.00	Travel Speed reduced, manoeuvre severely restricted
1.00 – 1.20	Travel Speed substantially reduced, manoeuvre very difficult
> 1.20	Crawling travel speed, widespread congestion and queues; The higher the P/Df, the greater likelihood of the queue extending to the upstream junctions thus causing extensive gridlock in the local road network.

Source: TD

Annex VI
(para. 10.1)

I	Comments from ETWB	The Ombudsman's Response
(a)	The Mid-Levels Moratorium was intended as a measure to **alleviate** the traffic congestion problem, not to **resolve** it altogether. Assessment should, therefore, be made against this objective.	Point agreed: the Mid-Levels Moratorium was indeed meant to ease traffic congestion by restricting building development (para. 3.5). We see restricting building development as a means directly to limit resident population and indirectly to reduce the number of cars on the road, thus minimising traffic congestion.
(b)	Had the Mid-Levels Moratorium not been imposed and were it not continued, the four Government sites could have been sold and the 28 private sites under restricted lease could have been developed at higher intensity. As a result, a total of 1330 flats could have been built, generating 466 additional vehicle trips per day. Therefore, the Mid-Levels Moratorium has been serving its objective of alleviating traffic congestion. We have difficulty with your comment that "the Mid-Levels Moratorium was practically doomed to fail from the outset", though we agree to your general assessment that its effect is limited.	Our point is that Government should have been well aware of the inherent limitations of an administrative Mid-Levels Moratorium, due to the large number of sites under unrestricted leases (paras. 4.15 and 9. 2).
(c)	It would not be fair to conclude that the Administration has been complacent with the effectiveness of the Mid-Levels Moratorium as it has indeed taken other measures to alleviate the traffic congestion problem, including : (i) new roads, e.g. the Aberdeen Tunnel, Hill Road Flyover, (ii) the Central Mid-Levels Escalator Link; (iii) various traffic management measures, e.g. bus only lane, banning of goods vehicles during the morning peak and enhanced public transport services;	The focus of this investigation is on the effectiveness of the Mid-Levels Moratorium itself. We are, of course, aware of the other measures taken to cope with the traffic problem.

I	Comments from ETWB	The Ombudsman's Response
	(iv) adoption of the lower end of the car-park provision standard recommended in the Hong Kong Planning Standards and Guidelines; and (v) the plot ratio restriction of 5. We have been monitoring the traffic situation. Between 1984 and 2004, traffic speeds in the area were more or less level. We have been able to prevent the traffic congestion problem from serious deterioration.	
(d)	There has been no intention to use the Mid-Levels Moratorium to stop all developments in the Mid-Levels area. The Administration recognizes and respects the rights of landowners under their respective leases and the law. The Mid-Levels Moratorium should be applied in the area of lease modification of private sites. It is, therefore, misleading to point to the redevelopment of buildings under unrestricted leases as evidence of the failure of the Mid-Levels Moratorium.	We fully realize the difference between "restricting" and "stopping" development. However, the Mid-Levels Moratorium is not just about restricting lease modification. The three component measures are : (i) public land – sale to be deferred; (ii) sites under restricted leases – lease modification to be deferred; and (iii) sites under unrestricted leases – to use the BO and BR to prevent more intensive development (para. 3.5). The Administration had evidently intended to prevent more intensive development on sites under unrestricted leases as well. That failed because it was subsequently found that the BO could not be used to refuse building development on grounds of intensity (para. 3.7).
(e)	The implementation of the Mid-Levels Moratorium is a multi-agency effort with ETWB as the policy coordinator. Work has all along been clear and well coordinated.	With ETWB acknowledging its role as coordinator, textual amendments have been made. However, we remain of the view that coordination in the implementation of the Mid-Levels Moratorium has been inadequate (para. 5.1, 5.20 – 5.21, 7.1 – 7.3).

I	Comments from ETWB	The Ombudsman's Response
(f)	The argument that HPLB, not ETWB, is Lands D's housekeeping bureau and that, therefore, there is a problem in the line of command for implementing the Mid-Levels Moratorium is unsound. Taking traffic offence as an example, the Police are under Security Bureau but they enforce traffic-related regulations that are under the policy portfolio of ETWB. The arrangement is working well. To us, nothing is unclear in so far as the mechanism for implementing and reviewing the Mid-Levels Moratorium is concerned.	We appreciate the clarification.
(g)	All policy bureaux pay due regard to the importance of the transport policy objectives in pursuing their own policy initiatives. HPLB, who looks after planning and land matters, is naturally a close working partner of ETWB. The present plot ratio of 5 for "Residential (Group B)" zone in Mid-Levels is an example of how the planning side of the Administration has complemented our efforts in tackling the traffic congestion problem.	If the mechanism for coordination, monitoring, assessment and review had been properly in place, the plot ratio restriction could have been introduced earlier (para. 7.3(b)).
(h)	**Para. 1.4:.** We do not consider that the reorganisation of policy bureaux and departments over the past 30 years has led to problems in the implementation of the Mid-Levels Moratorium.	Our concern was over reorganisation **without setting up an effective mechanism** for coordination and monitoring, assessment and review.
(i)	**Paras. 4.6 – 4.10:** The table at para. 4.7 does not necessarily substantiate the conclusion in para. 4.10 for the following reasons: (i) The number of building plan submissions would very much be related to the market situation and readiness of owners to redevelop their sites. The building plan submissions do not	The table is meant to show the **general** trend of development in the Mid-Levels area. We note that the rise or drop in the number of units completed **largely** corresponded with the incidence of building plan submissions. The statistics cover developments both on sites under restricted leases and those under unrestricted leases. This illustrates both the inherent

I	Comments from ETWB	The Ombudsman's Response
	necessarily equate with the building plans finally approved or the development ultimately completed. (ii) The sites with building plan submissions include those under "unrestricted leases", which are not subject to the Mid-Levels Moratorium. (iii) Since the imposition of the Mid-Levels Moratorium, the number of building plan submissions has never bounced back to the record high of 27 in 1972. (iv) Ever since the imposition of the plot ratio restriction, the number of submissions has in fact been way down, mostly down to the single digit level. (v) By and large, the number of building plan submissions has been decreasing over the years with the imposition of the Mid-Levels Moratorium, the plot ratio restriction and other measures implemented. The net increase in residential units might be smaller than that set out in the table in para. 4.7, as there could have been flats demolished upon redevelopment.	limitations the Mid-Levels Moratorium and deficiencies in its implementation. Although the incidence of building plan submissions has never reached the record high of 27 since 1973, it was maintained at double digits each year for the period 1985 to 1991. As the number of sites in the area is fixed, the incidence of building plan submissions inevitably diminishes with time.
(j)	**Paras. 5.1, 5.20, 5.21, 6.1, 7.1-7.4:** ETWB is the coordinator for the Mid-Levels Moratorium and, with the help of TD, has been monitoring, assessing and reviewing the need for the Mid-Levels Moratorium besides doing the same for all the other measures to help tackle the traffic congestion problem. We disagree with the conclusion in para. 5.21.	We have explained at length what and why we see inadequacies in the coordination, monitoring, assessment and review of the Mid-Levels Moratorium (para. 5.1, 5.20 – 5.21, 6.1 – 6.7, 7.1- 7.3).
(k)	**Para. 6.7:**	

I	Comments from ETWB	The Ombudsman's Response
	The suggestion here is that we have not reviewed the actual impact of the Mid-Levels Moratorium on development/redevelopment in the area since 1982, but indeed the most relevant indicator is the traffic situation, which we have been closely monitoring over the years.	We appreciate that ETWB and TD have been monitoring the traffic situation. However, little seems to have been done about the rise in the number of residential units, the very source of the increase in traffic.
(l)	**Paras. 9.2 and 9.3:** (i) We cannot deduce from the 30-year old ExCo papers your assessment that the initiators of the Mid-Levels Moratorium were not aware of (and did not properly focus on) the inherent limitations to its effectiveness. We, therefore, cannot understand the basis of your criticism that the policy was "ill-conceived" and "poorly planned". (ii) We can only agree that the effectiveness of the Mid-Levels Moratorium is limited and that we should review the situation and consider what more, including measures relating and not relating to the Mid-Levels Moratorium, can be done to further improve the traffic condition, taking all relevant considerations into account.	(i) The intended application of the BO and BR to prevent more intensive redevelopment on sites under unrestricted leases was soon found to be not feasible (paras. 3.7 and 4.15(c)). More careful research and better planning should have gone into the conceptualisation of the Mid-Levels Moratorium. (ii) We look forward to future improvement.
(m)	**Para. 9.4:** We accept all your recommendations except (c)(ii).	Para. 9(c)(ii) has been replaced by para. 9(b)(ii), as we consider clear guidelines and close cooperation to be essential.
(n)	**Para. 9.5:** We do not consider that the question at issue is one on how the policy bureaux and departments involved are organized, but what more the Administration can do in terms of further traffic improvement measures.	We suggest that the Administration should take reference from this case in planning future reorganisations and avoid deficiencies in coordination.

II	Comments from HPLB	The Ombudsman's Response
(a)	The Mid-Levels Moratorium was never intended to <u>prohibit</u> developments/re-developments in the Mid-levels area, but to restrict them to what is permissible under the existing leases. As for leases which are unrestricted in terms of development right, Government cannot unilaterally impose a limit so long as the proposed re-development complies with the OZP and BO. The Mid-Levels Moratorium being administrative in nature cannot override private property rights. Lands D must respect the development right as permitted under the lease. There is, therefore, no question of Lands D not supporting, let alone disregarding the Mid-Levels Moratorium.	Point agreed: we realize that the Mid-Levels Moratorium was intended only to restrict development; but application was to both sites under restricted leases and those under unrestricted leases (para. 3.5). It was unfortunate that the intended application of the BO and BR to the latter sites could not be effected (para. 3.7). As regards the former, the liberal approach adopted by Lands D has facilitated rather than restricted redevelopment of such sites. We are concerned that this is contrary to the intent of the Mid-Levels Moratorium (paras. 5.10 – 5.15).
(b)	We acknowledge that the traffic situations in the Mid-levels are still not altogether satisfactory. Therefore, it is necessary for the Administration to keep the effectiveness of the Mid-Levels Moratorium under review.	We look forward to the outcome of such review.
(c)	On the issue of co-ordination and delineation of responsibilities, ETWB remains the lead bureau in coordinating and overseeing the implementation of the Mid-Levels Moratorium. Lands D's role is to assist ETWB to achieve its policy objective by restricting development intensity in the Mid-Levels area where applicable having regard to the terms of the lease. While HPLB is the policy bureau for Lands D, our role and interest is less direct than ETWB. We will, of course, work jointly with ETWB in overseeing the operation and the implementation of the Mid-Levels Moratorium.	Noted. Textual amendments have been made.

II	Comments from HPLB	The Ombudsman's Response
(d)	With regard to the role of TPB, while it has the authority to impose plot ratio restriction, it has to strike a balance between private development rights (unrestricted leases) and public interest. This is particularly important as there is no provision for compensation for statutory planning restrictions under the Town Planning Ordinance except in the case of land resumption. If more stringent planning control is imposed, it must be supported by strong justifications and relevant studies, as in the case in 1990 when a plot ratio of 5 was imposed for the "Residential (Group B)" zone. It is, therefore, not a question of not using more stringent planning control to achieve the restriction on development intensity.	The question remains whether greater weight should have been given to "public interest" as against "private development rights".

III	Comments from Lands D	The Ombudsman's Response
(a)	The Mid-Levels Moratorium, being administrative in nature, cannot override private property rights. Contractually, Lands D has to respect the development rights permissible under the lease.	We agree, but it is questionable whether in view of the Mid-Levels Moratorium, Lands D should facilitate or enhance such rights, as indicated in (b) below.
(b)	Your finding (in paras. 1.1, 5.10 and 9.2) that Lands D has adopted a "somewhat 'liberal' approach (to some, a rather 'loose' attitude) in determining the development intensity" is premised on the view that we have permitted lease modifications to allow the development of multi-storey buildings, which accommodated a larger number of residential units and contributed to greater intensity of development. We would like to point out that in implementing the Mid-Levels Moratorium, gross floor area ("GFA") and not the number of storeys is the only relevant and objective measure of development intensity in terms of lease administration. To allow the construction of the GFA that has been provided for and can be achieved under an existing lease, but only with the lease height limit removed, cannot be regarded as contributing to greater intensity of development. We, therefore, disagree that Lands D has been less than determined in upholding the spirit of the Mid-Levels Moratorium (para. 5.10).	TD has advised, that in traffic engineering terms, the volume of traffic generated by residential developments is essentially related to the number of residential units. GFA may well be the only relevant and objective measure of development intensity. However, the question is: whether Lands D should have removed the height restriction of a site? This has allowed the development of multi-storey buildings with a far larger number of units and residents, thereby generating more traffic.
(c)	Given the case law on the definition of "house", even if Lands D were to reject an application for lease modification to remove the "house only" restriction and the building height limit, the owner would still be able to develop/redevelop up to the amount of GFA he is entitled to under the restricted lease in the form of a block of flats not exceeding the existing height limit. Some such developments have in fact taken place.	Common sense (and observation of the present state of development in Mid-Levels) should indicate that developers are naturally inclined to redevelop sites for taller buildings with more residential units once the height restriction is lifted. Lands D claims that "some" redevelopments have taken place within the original height limit but it has given only one example and no overall figure.

III	Comments from Lands D	The Ombudsman's Response
	Your interpretation of what constitutes a "house" is at variance with the case law on what a restriction to "house" means. A "house" does not preclude a block of flats.	
(d)	Most sites in the Mid-Levels area are under unrestricted leases for which lease modification is not necessary for redevelopment (paras. 4.12(a) and 4.15(b)). Indeed, all the seven samples cited in para. 4.3 to illustrate your point that redevelopment has resulted in "bigger and taller" buildings with more car-park spaces and more traffic relate to unrestricted leases (Annex III). In 2005 there were 147 privately owned sites in the Mid-Levels area which on our assessment have redevelopment potential whilst only 28 of these were held under restricted leases (para. 6.6). The impact, if any, of Lands D's current approach to implementing the Mid-Levels Moratorium on the increase in development intensity in the Mid-Levels area has to be gauged in this context.	The seven samples are intended to show the inherent limitations of the Mid-Levels Moratorium (as regards sites with unrestricted leases). Para. 4.1 has been amended to reflect this.